IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1) S.B. Civil Writ Pet. No.2193/01
Shiv Raj Vs. State & Ors.

(2) S.B. Civil Writ Pet. No. 2190/2001
Shiv Raj Vs. State & ors.

(3) S.B. Civil Writ Pet. No. 761/02
Badar Ram Bhati Vs. State & Ors.

(4) S.B.Civil Writ Pet. No. 3902/01
Ratana Ram @ Ratan Lal Vs. State & Ors.

(5) S.B. Civil Writ Pet. No. 3903/01
Raju Devi Vs. State & Ors.

(6) S.B.Civil Writ Pet. No. 3892/01
Amara Ram Vs. State & Ors.

(7) S.B. Civil Writ Pet. No. 538/02
Khiya Ram Vs. State of Raj.

(8) S.B. Civil Writ Pet. No. 535/02
Mohan Lal Vs. State of Raj.

(9) S.B. Civil Writ Pet. No. 1923/02
Oma Ram Vs. State & Ors.

(10) S.B.Civil Writ Pet. No. 1932/02
Smt. Dhapi Vs. State & Ors.

(11) S.B. Civil Writ Pet. No. 1934/02
Om Prakash Vs. State of Raj. & Ors.

(12) S.B. Civil Writ Pet. No. 1936/02
Multan Ram Vs. State & Ors.

(13) S.B. Civil Writ Pet. No. 1924/02
Ram Deen Vs. State & Ors.

(14) S.B. Civil Writ Pet. No. 1937/02
Smt. Kamla Vs. State of Raj. & Ors.

(15) S.B. Civil Writ Pet. No. 1933/02
Deva Ram Vs. State of Raj.& Ors.

(16) S.B. Civil Writ Pet. No. 492/02
Mahaveer Chand Vs. State of Raj.

(17) S.B. Civil Writ Pet. No. 1493/01
Sohan Ram Vs. State & Ors.

(18) S.B. Civil Writ Pet. No. 523/02
Pancha Ram Vs. State of Raj.

Under Articles 226 & 227 of the Constitution of India.

Date of order : 28.3.2007

PRESENT
HON'BLE MR. JUSTICE BHAGWATI PRASAD

Mr. A.K. Rajvanshy)
Mr.D.K. Parihar)for the petitioner.
Mr. M.R. Singhvi for the respondents.
Mr. P.P. Choudhary for the applicants.
Mr. N. Moolchandani for the State.

In this batch of writ petitions the question under challenge is decision of the Addl. Collector, Jodhpur. By order under challenge the Revisional Authority has allowed 18 revision petitions filed by

Harkaram. The revision petition was filed in relation to 18 pattas issued by the Panchayat. The learned Addl. Collector by order impugned has accepted all the 18 revision petitions filed before him being No. 3 to 20/2000.

The learned Addl. Collector has given reasoning for accepting the revision petition that the panchayat land can be disposed of by Gram Panchayat by following the procedure prescribed under the Rules under Rajasthan Panchayat Raj Rules, 1996 (here in after referred to `Rules of 1996'). The procedure for disposal of land is prescribed under the Rules framed 136 to 168. The disputed pattas were issued under the signatures of the then Sarpanch Jhavrilal on 1.11.1999 purpurtedly following Rule 167 of the Rules of 1996.

As and when a patta is issued under the Rule 167 of the Rule of 1996, it has to be preceded by the procedure prescribed under the preceding rules. The Revisional Authority has observed that Rule 145,146 and 148 of the Rules of 1996 were not followed by the Gram Panchayat before the aforesaid pattas were issued by the applicants for allotment of land. Application forms have been filled in on 25.8.1999 and the same were received by panchayat on 1.9.1999. The map which has been prepared of the proposed land has not been signed by any Gram Sevak cum Secretary of Panchayat. All the recipients of pattas are shown to be the age of 25 to 35 and it has been

shown that they are in possession of the land from last 25 years. This has been shown before the Addl. Collector that the pattas have been issued under Rule 156 and 157 of the Rules of 1996. The Rule 157 and 158 are quoted for ready reference:

> Rule 157. Regularisation of old houses – Where the persons are in Possession of the old house in Abadi land and desire to get a Patta issued patta may be issued by the Panchayat after depositing charges ad under:-
>
> (a) For old houses constructed more than fifty years ago - Rs.100/-
> (b) For old houses constructed during last fifty years from the date of commencement of these rules- Rs. 200/-
>
> Rule 158. Allotment of lands to weaker sections – (1) The Panchayat may allot Abadi land upto 150 sq. Yeards in village Abadis at concessional rate to members of Scheduled Caste, Scavengers, Scheduled Tribes, Backward Classes, village artisans, landless persons dependent on wage labour, IRDP selected families, Handicapped, Nomatic Tribes, Gadia Lohar who do not own house sites/house and also to flood victims whose ouse have been washed away or the house sites have been rendered unfit for future habitaton due to floods.
>
> (2)Rates to be charged from such allottees will be as under:
> (a) In villages having population less than 1000 (1991cencus) - Rs. 2/- per sqr.mtr.
> (b) In villages having population from 1001 to 2000 (1191 cencus) - Rs. 5/- per sqr. mtr.
> (c)In village having population more than 2000 (1991 cencus).- Rs.10/- per sqr. Mtr.
>
> Provided that the State Govt. may allot such lands free of charges to any such category of persons.

Under Rule 156 as quoted herein above what is to be seen is that if the land cannot be sold for reasonable price then the land could be sold by private negotiations for any other reason to be recorded in writing including trespass. The land could also be allotted by negotiations if it was strip of land. The Collector has observed that none of these conditions were fulfilled, therefore, the land could not have been allotted under Rule 156 of the Rules of 1996. According to the Revisional Authority the allotment could not have been made under Rule 157 also because that relates to dwelling houses. For invoking Rule 157 of the Rules of 1996 possession has to be there of defined period. When the age of the applicants was in between 25 to 35 they could not have the possession as required under the Rules of 1996. This was brought to the notice of the Addl. Collector that the land is valuable and if this land is disposed of in accordance with Rules by auction sizable amount can be realised. There was certain dispute in civil courts also in which Panchyat has objected to the allotment proceedings.

It has been observed that the proceedings of the gram Panchayat have been fabricated and according the the Addl. Collector the proceedings of the Gram Panchayat shown to have been taken

place on 15.9.1999 but on such date no meeting of the panchayat was held. According to the record produced before the Addl. Collector, the record of the gram panchayat,Bhopalgarh in the shape of Proceedings register dated 01.9.1999 the day when meeting is alleged to have been held, no meeting was held on this date. There is no reference of receiving of applications for disposal and that the proceedings of this day is signed by the then Sarpanch Jhavrilal but in the meeting dated 15.9.1999 what is recorded is that a committee is formed for disposal of the applications.According to the register the meeting dated 15.9.1999 was not held for want of quorum. On 1.10.99, 15.10.99 the meetings could not be held for want of quorum. The proceedings of this date are signed by the UP Sarpanch and Four punch. The register is for the period 1.8.1999 to 15.12.1999. The former Sarpanch Jhavrilal has certified pages from serial No. 1 to 65 of this proceedings register, the Addl. Collector has noted that apart from this Pattabahi from serial No. 1 to 28 is certified by the former sarpanch and in this register from 1.11.1999 301 to 400 and 401 to 421 pattas have been issued. For serial No. 401 to 421 the Addl. Collector has noticed that a different pen & ink has been used for this and the formar sarpanch signed pattas on 1.11.1999.

On 29.9.1999 a separate register has been opened in which resolution No. 4 & 5 it has been recorded that Gram sevak is not

attending the meeting, he is incharge of other panchayat bodies also and, therefore, patta register, receipt book and other files could not be obtained. In resolution No. 4 & 5 authority was conferred on sarpanch to do all the formalities and sanction was obtained for the same on 1.8.1999,16.8.1999, 1.9.99 and 15.9.99 to prepare the pattas etc. Thus, according to the Addl. Collector, there are two parallel resolution books of the panchayat which according to the Collector are not in accordance with the procedure of law.

The former Sarpanch has prepared a separate register from page No. 1 to 62 and up to 15.12.1999 only 12 pages have been used by the formar Sarpanch. Another register has been opened on 29.9.1999. There resolution No. 4 & 5 have been taken by which he has sought sanction of issuing pattas as aforesaid in earlier register. There is no mention of the resolution dated 29.9.1999. Thus the collector has come to the conclusion that a separate register having been opened on 29.9.1999 the resolution No. 4 & 5 have been taken which is against the public policy.

From another record, the Collector has found that in gram panchayat Bhopal Garh serial No. 401 to 418 pattas were issued which are subject matters of the revisions. The register was opened

under a resolution dated 15.5.1999 on 1.11.1999. The pattas were issued under Rule 157 of the Rules of 1996. According to the Secretary of the Gram Panchayat, no pattas were issued from 23.1.1998 to 1.3.2000 by gram panchayat in recorded meetings. Thus the Collector found that it was the result of unauthorized meeting. The Collector has also noticed that the land was recorded as Abadi Bhoomi but the panchayat could always controvert the same. The Addl. Collector has noticed that under Rule 156 and 157 the lands could not have been alloted. The procedure prescribed under the Rules have not been followed. The case of the patta holders is not covered in any of the provisions of Rule 156 and Rule 157 of the Rules of 1996. The pattas were, therefore, irregularly issued.

Arguing the writ petition, learned counsel for the petitioner Mr. A.K. Rajvanshy submits that one of the argument against the petitioner was that the land does not belong to panchayat. It was argued that earlier this was held that the land does not belong to panchayat but now it has been held that land belongs to panchayat, therefore, panchayat had a right to grant pattas. Secondly, learned counsel for the petitioner urged that they were prepared to give money of the land to the gram panchayat, thirdly the learned counsel urged that the Revisional Court have no jurisdiction because the

revision as prescribed was not in accordance with law.

The arguments of the learned counsel for the petitioner was controverted by the learned counsel for the respondents because the land being panchayat land could only be disposed of in terms of Rules, Rules were not followed. Rules having not been followed it was not possible to hold pattas in favour of the petitioners as valid. The money could be paid as claimed by the petitioner only in a proper manner and that was available to the petitioner. They having not availed that opportunity they cannot say so in this position. The regularization of the land under Rule 156 & 157 of the Rules of 1996 falls in a different category such as allotment was not available as claimed by the petitioner.

I have heard learned counsel for the parties and have given my thoughtful consideration. If the scheme of Rules of 1996 is considered then the most important rule in connection of sale of lands by Gram Panchayat is Rule 141 which is produced herein below for ready reference:

> "Rule 141. Sale of land – All sales of land by a Panchayat shall ordinarily be made through auction unless there are special reasons for not doing so. Panchayat may decide to sell such land through auction programme fixed in advance."

The aforesaid Rule provides that all sales of land by Panchayat has to be through auction unless special reasons are available for not doing so. Neither from the record nor from the arguments this could be made out that there were any reasons recorded or available for not disposing the land in question by auction. Rule 156 & 157 of the Rules of 1996 are in the nature of Rule 141 which provides transfer by private negotiations and regularization of old houses.

Learned counsel for the petitioner has not been able to bring his case in any of these two categories which are exception to Rule 141. There is no reason why the land in question could not be put for auction. When the petitioners approached this Court it was with a clear understanding that the petitioners wanted to pay market price of the property and on this condition, the notices were issued. Thus, even at the inception, the learned counsel was aware of the fact that his case is not covered by the Rules of 1996 for allotment. The procedure for auction is also delineated in the subsequent Rules to Rule 141 of Rules of 1996. None of these rules were followed. Thus the irresistible conclusion from the facts is that the allotment in favour of the petitioner was dehorse the Rules. If any allotment is made dehorse the Rules then the restoration of such an allotment in

exercise of jurisdiction under Article 226 of the Constitution of India is uncalled for. The courts have been unanimous that if a particular procedure is prescribed in law for doing the thing then that should be done in accordance with law or not at all.

Learned counsel has placed reliance on the judgment reported in (2002) 1 Supreme Court Cases 633 in the matter of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Ors.). It is held therein that:

> 27."it is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself."

In the instant case the Rules have not been followed. It was not possible to make the allotment in favour of the petitioners. The law in this regard is stated in the following judgment:

A judgment reported in WLC Vol. 4 Raj. 2002 577 in the matter of Sampat Lal Sethia Vs. State of Raj. & Ors. Passed in S.B.Civil Writ Petition No. 1548/2001. It is held therein that :-

> " 15. Sub-Section 1 (b) of Sec. 266 prescribes that if Panchayat feels that auction would not be convenient mode of disposal of the land, then the same can be

disposed of by private negotiations. There is not a whisper of this contingency being present in the allotment in question thus, Panchayat was not alive of this condition. Sub-Sec 1(c) relates to allotment to scheduled castes and scheduled tribes or other backward classes which is also not the case in hand. Thus, the allotment was not warranted by Rule 266 of the Rules of 1961. If allotment has been made under Rule 266 and none of the conditions as prescribed in Rule 266 are met out, then it is obviously a matter where it can safely be said that Panchayat had acted in colourable exercise of jurisdiction at the instance of Up-Sarpanch, petitioner who was the main beneficiary."

A another judgment reported in RLR Vol. 40 (3) 2002 453 in the matter of (Jagdish Vs. Addl. District Magistrate II & Ors.) 2. (Suwa Lal Vs. Ladu Ram & 4 Ors.) 3. Suwa Lal Vs. Addl. Collector III, Jaipur & 3 Ors.). It is held therein that:

35.The land in dispute has not been sold by the Panchayat to the petitioner by auction. From the perusal of the record of the writ petition it transpires that the lands has been sold to the petitioner by the Panchayat resorting to this provision.

36.As per Rule 141 of the Rules, 1995 the sale of the land by a Panchayat shall ordinarily be made through auction. However, if there are special reasons for not doing so, the Panchayat may sell this land by a mode other than auction. From the resolution of the Panchayat for sale of this land in dispute to the petitioner it has no where recorded special reasons not to go for auction of this land. This is the first serious illegality which is committed by the Panchayat in the sale of the land in dispute to the petitioner.

37.Where the matter is examined with reference to Rule 156 of the Rules, 1996 transfer of any Abadi land by way of sale y private negotiation is permissible to the Panchayat only in the cases as enumerated in that rule, reproduced above.

38.The Panchayat nowhere has held in the resolution that the petitioner has a plausible claim of title to the land in dispute. The petitioner in the application submitted to the Panchayat for purchase of land in column No. 4 thereof stated that he is in possession thereof for the last fifteen years. In the application the petitioner nowhere stated that he has a plausible claim of title to the land in dispute for fifteen years. Even it is correct it does not fall under the category of a plausible claim of title to the land. It is an open piece of land. A person having a plausible claim of title to the land, this is also not sufficient for exercise of the powers by the Panchayat in his favour under Rule 156 of the Rules, 1996. In the case of a plausible claim of the title to the land of person the transfer of the land is to be made by auction. The sale by private negotiation is permissible only in case the Panchayat has resolved that an auction thereof may not fetch a reasonable price. That apart the Panchayat has not found any trespass on the land and that the auction would not be convenient mode for disposal thereof. Above that it has not recorded any reason how the auction would not be convenient mode of disposal of the land.

It is also held in the judgment reported in 1986 (1) WLN 707 in the matter of Giri Raj & Ors. Vs. State of Raj. & Ors. It is held there that:

13.“Apart from that it is necessary to determine whether the land which is sold is necessary for the public use or the village use by way of chowk, road or other allied matters such as, some times, it is used for the ceremonial functions of the village where the people assemble and perform the ceremonial functions. For this reason, under the Rajasthan Panchayat Rules, 1961, special provision has been made under Rule 257 for the preparation of the plan. Under Rule 258 after the preparation of the plan, three of the Panchas who are nominated by the Panchayat go for local inspection of the site and submit the report to the Panchayat. Under Rule 259, provisional decision is taken whether the sale should or should not made. Under Rule 260 the Panchayat invites to the general pubic about the proposed sale of land and invites objections against

> the proposed decision. Thereafter, the disposal of the objections if any, received in respondents to the notice shall be disposed of by the Panchayat after giving the parties concerned reasonable opportunity of being heard under Rule 261. The land is sold by way of auction under Rule 262. Rule 266 is an exception to the General Rule 262. In Rule 266 also clauses (a), (b) and (c) provide that the land may be sold by way of negotiations where any person has a plausible claim of title to the land and an auction may not fetch reasonable price. Thus, before applying the provisions of Rule 266, it is necessary to determine whether there is any plausible claim of title of any third party or not and, if the land is sold by way of auction it will fetch higher price or not. It is also necessary to determine whether, for the reasons to be recorded in writing the Panchayat thinks that an auction would not be convenient mode of the disposal of the land. No such grounds are available on record."

The Revisional Court has noticed that the then sarpanch had been dodging the record in such a fashion so as to entitle him to violate the law at will. This is nothing but playing the fraud with law and, therefore, any action with the above intention cannot be saved in extra ordinary jurisdiction of this court under Article 226 of the Constitution of India. In that view of the matter, the revisions as decided by the revisional Court appears to be rightly decided and the pattas have rightly been cancelled.

While hearing all the present set of writ petitions in the court the notice was issued to the respondents on the condition that the petitioners are prepared to pay market price of the land. This is so recorded in the order sheet of the case on 09.8.2001. Thereafter an

attempt was made to accommodate the present allottees by offering them another alternative land but they refused to accept the alternative land. In the meanwhile, the State Govt. came with a proposal that they are prepared to auction the land in question according to the map presented before this court. Such proposal was put forward before the Court on 26.4.2002 and the proceedings have been recorded in this regard. In fact the lands in question were put to auction. On 09.8.2001 it was recorded that the petitioners are prepared to give the market price. It was available for the petitioners to pay the same at auction but it appears such assurance as given before the court was only an eye wash.

Subsequently, land was offered to petitioner at an alternative place, the petitioners have refused to accept that on the grounds other then bonafide. In that view of the matter, the petitioners by their conduct have lost their entitlement for any consideration which could be made in their favour for giving them alternative land and thus, the petitions are deserve to be dismissed and are accordingly dismissed.

In this batch of petitions in few of the petitions petitioners are represented by Mr. D.K. Parihar. Learned counsel for the petitioners did not advance any arguments at the hearing on the ground that the

Division Bench of this Court is seized of some matter in which the land of Bhopalgarh is involved. Mr. Parihar was requested to address the courts but he choose not to do so. But since the order in question in the writ petitions of Mr. Rajvanshy and of Mr. Parihar is the same, therefore, if the order goes in the writ petition filed by Mr. Rajvanshy the same treatment is required to be given to the petitions in which Mr. Parihar has challenged the same order. Thus, the writ petitions of Mr. Parihar are also dismissed for the reasons given in writ petitions being argued by Mr. A.K. Rajvanshy.

Since the lands have been put to auction, the auction proceedings have been produced before this Court. The State Govt. has been given a full and free hand to confirm the auction, those auction proceedings have become final, therefore, nothing is ordered in relation to those auction proceedings. The lands were auctioned for a very huge amount and, therefore, in equity also no interference is called for in favour of the petitioners. Any amount deposited by the petitioners may be returned to them as they have not availed the alternative lands as offered.

Mr. P.P. Choudhary, learned counsel for the applicants has applied for his client to be impleaded as party in the petition. His

claim vests on the fact that proprietorship was claimed by the applicant. This question is subject matter of another litigation as informed. This question cannot be gone in the present proceedings. These relat to revisional order of the Addl. Collector, therefore, Mr. Choudhary's claim is not considered proper to make party to his client in the proceedings. Hence that aspect of the matter has not been gone into these writ petitions.

(BHAGWAIT PRASAD), J.

ns.